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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,462	04/01/2004	Alain Van Sinoy	F-918 (31223.00035)	8397

25264 7590 04/04/2006

FINA TECHNOLOGY INC
PO BOX 674412
HOUSTON, TX 77267-4412

EXAMINER	
ASINOVSKY, OLGA	
ART UNIT	**PAPER NUMBER**
1711	

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/816,462	SINOY ET AL.	
	Examiner	Art Unit	
	Olga Asinovsky	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 April 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *07/25/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. Claims 9, 10 and 11 provide for the use of the polyethylene composition, but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. The claims are indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 9, 10 and 11 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd.* v. *Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

> only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-8 and 12 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Debras et al U.S. Patent 6,566,450.

Debras discloses a process for the preparation of polyethylene resins having a bimodal molecular weight distribution. The polyethylene resin comprises a mixture of the first and second polyethylenes to form a polyethylene resin having a bimodal molecular weight distribution, a density of from 0.95 to 0.96 g/mol, and a HLMI (high load melt index) of from 3 to 10 g/10 min. The first polyethylene is produced by using a metallocene catalyst such as ethylene bis(4,5,6,7-tetrahydro-1-indenyl) zirconium dichloride, col. 11, lines 57-58, for the present claims 1 and 8. The first polyethylene is a LLDPE having a first density of not more than 0.925 g/mol., col. 2, lines 54-57. The second polyethylene can have a higher density than the first polyethylene, and the second polyethylene is produced using a catalyst other than the bis tetrahydroindenyl compound, col. 3, lines 1-5. The catalyst for the second polyethylene can include other metallocene catalyst or Ziegler-Natta catalysts, claim 6 at column 14. The second polyethylene can have a bimodal molecular weight distribution, col. 4, lines 14-17 and

col. 5, lines 10-14. The first and the second polyethylenes are physically blended to form a polyethylene resin having a bimodal molecular weight distribution having a density of from 0.95 to 0.96 g/mol and HLMI pf from 3 to 10 g/10 min (equivalent to 0.3 to 1 g/min), that are readable in the present claim 1. Debras'450 does not disclose a density of the second polyethylene. However, it is reasonably to presume that the claimed density property and a melt index for the second polyethylene would possess the same characteristics in Debras invention because the second polyethylene can be produced by using the same Ziegler-Natta catalyst. It is a burden on the applicants to provide the difference in order to overcome this rejection under *In re Fitzgerald* 205 USPQ 594.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1-8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marechal U.S. Patent 6,355,741.

8. Marechal discloses a process for producing polyolefins having a bimodal molecular weigh distribution, comprising a mixture of a first polyolefin fraction and a second polyolefin fraction, col. 3, lines 60-67. A polyolefin is particular polyethylene produced in the presence of a metallocene catalyst. , col. 5, lines 44-47. A low density

fraction of polyethylene is produced in the first loop reactor, a high density low molecular weight polyethylene is produced in the second loop reactor, col. 9, lines 27-33. The density of the first polyethylene is 0.926 g/ml, and the density of the second polyethylene is 0.950 g/ml., col. 14, line 22. References discloses that using two loop reactors in series is a benefit to control the density in the two fractions produced in the two reactors, col. 10, lines 37-50. Marechal does not disclose a melt index for polyethylene for each fraction nor a density of the resulting polyethylene blend. It would have been obvious to one of ordinary skill in the art to consider that the blend of the first and second polyethylene fractions in Marechal invention can have the properties specified in the present claims because the process conditions in each loop reactor are under control and since Marechal discloses the density of the first polyethylene and second polyethylene being the same as in the present claims.

There is no European Patent Application N. 04007550.9 filed March 29, 2004 in the file in the present application.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. EP 0619325 has been considered. EP'325 discloses a bimodal molecular weight distribution for polyethylenes in the presence of two metallocene catalysts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is 571-272-1066. The examiner can normally be reached on 9:00 to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Olga Asinovsky
Examiner
Art Unit 1711

O.A
April 03, 2006

James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700